IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL SIDE JURISDICTION

Arbitration Application No.159 of 2006

Ayyub J Bhola and anr. ..Applicants
vs
Manoj D Parikh and anr ..Respondents

with

Arbitration Application No.160 of 2006

Shabbir N Khan and ors. ..Applicants
vs
Manoj D Parikh ..Respondent

Mr S.C. Gupte with Mr Swapnil Bangar i/b Bhaskar & Co
for the applicants.
None for respondents.

CORAM: SWATANTER KUMAR,C.J.

Judgment reserved on 8th June 2007
Judgment delivered on 19th July 2007

JUDGMENT:

By this order I would dispose of the above two arbitration applications filed by the parties under section 11 of the Arbitration and Conciliation Act, 1996, hereinafter referred to as the “Act”.

When these matters were called on 13th April 2007 nobody was present for the respondents and therefore in order to give a chance to the respondents to appear and argue the case, the matters were adjourned to 8th June 2007. Even on the adjourned date none appeared for the respondents and, therefore the matters were proceeded with and were heard exparte.

2. The facts in Arbitration Application No.160 of 2006 are that the respondents alongwith other two partners were running the business of manufacturing and sale of plastic cups, plates, bowls etc. in partnership. The firm run into financial difficulties and even the Indian Bank raised a claim against them to the tune of Rs.104.13 lacs by filing a suit being Suit No. 2580 of 1995 in that behalf. Another company also raised a claim. Even the properties of the firm were attached. The respondent- partners of that firm requested the applicants to infuse funds in the said firm to clear the substantial part of the liabilities. Upon infusing the amounts the applicants also became partners of the firm and it was proposed to convert the firm into a limited company under the provisions of the Companies Act, 1956. A memorandum of understanding was signed between the parties on 22nd January

2001. Out of the erstwhile partners of the firm, only two partners continued and other two retired on 19th October 2002 and a fresh memorandum of understanding was signed on 21st October 2002, but earlier conditions as stated in the memorandum of understanding dated 22nd January, 2001 remained unchanged and unaltered. The applicants claim to have brought in capital to the tune of Rs.70 lacs in accordance with the memorandum of understanding executed between the parties and performed their obligation. The business of the partnership so reconstituted carried on its business under the name and style of Reva Process Engravers. Various terms and conditions of the memorandum of understanding provide for the shares of the partners, nature of the business and also obligations and duties of the partners. The arbitration clause in the memorandum of understanding provides that all disputes between the parties shall be referred to the arbitration. The arbitration clause in Arbitration Application No.160 of 2006 reads as under:

> "All disputes, differences, claims and questions which shall arise between the parties or between one of them and the personal representatives of the other

> partners or between the other respective personal representatives and whether during or after the determination of the partnership and whether in relation to the interpretation of these presents or to an act or omission of either party to the dispute or either of them or in relation to any other action whatsoever touching the partnership affairs shall be referred to arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996"

3. After the liabilities were cleared in terms of the memorandum of understanding dated 22nd January 2001 as on 31st March 2004, the balance sheet which was admitted, there was obligation upon the respondents to pay a sum of Rs. 25.55 lacs to various third parties. Respondent No.l had also entered into a memorandum of understanding with one Narayan Harishankar Pandya in respect of certain liabilities owed by the said firm, which liabilities were undertaken to be cleared by the respondents, but the cheques issues in that behalf were dishonoured. Accordingly to the claimants as on 31st March 2004 the respondents have the following debit balance in the partnership capital account:

Respondent No.1	Rs.29,56,529.39
Respondent No.2	Rs.47,14,439.55

Besides this various other disputes have also arisen between the parties in relation to the memorandum of understanding dated 21st October 2002. Despite invocation of the arbitration clause and serving of notice dated 13th March 2006 the respondents have failed to constitute the arbitral tribunal in accordance with the provisions of the Arbitration and Conciliation Act, 1996.

4. The applicants had issued notices to the respondents on 13th March 2006 referring to all the factual controversies as well as raising their claim. They had clearly called upon the respondents to concur to their nominated Arbitrator as the sole arbitrator. In the reply it is stated that there is no cause of action whatsoever in favour of the applicants and in fact the applicants have defaulted in their obligations to the firm. It is also averred in the reply that without prejudice to their contentions raised in the reply, the matter could be referred to the arbitration provided the expenses are borne by the applicants. As is evident from the reply there is no specific denial in relation to the existence and

execution of the arbitration agreement. Further more, with regard to the service of notice it was stated that the notice was not sent at the correct address and at that address a different partnership firm by name M/s J.B.Parikh and Co. existed. The pleas raised in the reply are vague and there is no specific denial. The parties have admittedly failed to resolve their disputes amicably in terms of their understanding. Once the existence, validity and execution of the arbitration agreement is not questioned, then the plea of the applicants has to be accepted, as all other matters can be gone into by the arbitrator in accordance with section 16 of the Arbitration and Conciliation Act.

5. In the other application being Arbitration Application No. 159 of 2006, the applicants were served at the same address. The name of the partnership is M/s J B Parikh and Co carrying on business of builders, developers and promoters. Disputes is about Rs.50 lacs being outstanding share of the respondent. The partnership deed is dated 24th July 2002. Since the dispute between the parties could not be resolved the applicants by their Advocates notice dated 5th April 2006 invoked the arbitration

clause and filed the present application. In this application there is undisputed arbitration clause which reads as under:

> "If any dispute shall arise between the parties hereto in respect of the conduct of the business of partnership or in respect of interpretation, operation or enforcement of any of the terms and conditions of the Deed or in respect of any other matters, cause or thing whatsoever not herein otherwise provided for the same shall be referred for adjudication to the Indian Arbitration Act, 1940 or statutory modification or re-enactment thereof for the time being in force whose decision shall be binding on the parties and their legal representatives".

6. As far as these two Arbitration Applications are concerned, the Applicant nos. 1 and 2 in Arbitration Application No.159 of 2006 and respondent Nos. 6 and 7 in Arbitration Application No. 160 of 2006 and respondent Manoj Dilipkumar Parikh are common in both the applications. In fact all the parties in both these applications are common. The replies in both the applications have been filed by Manoj D Parikh, contesting respondent

7. The existence of the arbitration agreement and factum of disputes having been arisen between the parties, which they have failed to resolve, despite meetings, is amply clear from the pleadings of the parties. One of the objections raised in the reply in the present proceedings is that the applicants should be directed to bear the expenses of the arbitration proceedings. This cannot be ordered as the costs of the arbitration proceedings has to be borne equally by the parties. The remaining allegations, as already noticed, can be gone into by the arbitral tribunal in accordance with law. For these reasons it will be appropriate, keeping in view the stand taken by both the parties in their pleadings and the pleas raised during the course of the arguments, that the a sole arbitrator is appointed as it will be more economical and effective. Thus I hereby make these applications absolute and appoint Shri Justice S.N. Variava, former Judge of the Supreme Court of India as the sole arbitrator. Parties are at liberty to file their respective claims and counter claims before the learned Arbitrator.

Accordingly these applications are allowed, leaving the parties to bear their own costs.

The Prothonotary and Senior Master to communicate this order to the learned Arbitrator.

CHIEF JUSTICE

.